IMMIGRATION AND REFUGEE BOARD
(IMMIGRATION APPEAL DIVISION)

COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION D'APPEL DE L'IMMIGRATION)

IAD File No./Dossier: TA6-05322

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s) / **Appelant(s)**

NICHOLAS T. FOSTER

Respondent / **Intimé**

The Minister of Citizenship and Immigration
Le Ministre de la Citoyenneté et de l'Immigration

Date(s) and Place of Hearing / **Date(s) et Lieu de l'audience**

March 14, 2007
June 29, 2007
October 31, 2007
Toronto, Ontario

Date of Decision / **Date de la Décision**

October 31, 2007
November 8, 2007 (written reasons)

Panel / **Tribunal**

Joan M. MacDonald

Appellant's Counsel / **Conseil de l'appelant(s)**

Janice Lucenay

Minister's Counsel / **Conseil de l'intimé**

Claire Wittenberg

Reasons for Decision

[1] The appellant, Nicholas T. FOSTER, appeals a refusal of the sponsored application for a permanent resident visa of the applicant, Tomica Renia ELLIS-FOSTER, his spouse. The application was refused because the visa officer concluded that the applicant was a person described in section 4 of the *Immigration and Refugee Protection Regulations* (the *Regulations*).[1] The visa officer held that the applicant entered into the marriage primarily for the purpose of acquiring status or privilege under the *Immigration and Refugee Protection* Act (the *Act*).[2]

[2] The *Regulations* operate to exclude applicants from consideration in particular circumstances. Section 4 of the *Regulations* provides that if the marriage is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the *Act*.

[3] The onus is on the appellant to demonstrate that the applicant is not caught by the excluding section of the *Regulations*. In order to be caught by section 4 of the *Regulations* the preponderance of reliable evidence must demonstrate that the relationship is not genuine and was entered into primarily for the purpose acquiring any status or privilege under the *Act*. In order to succeed on appeal the appellant need only establish one of the prongs of the test has not been met.

[4] The appeal proceeded by way of a hearing *de novo*. The appellant contended that the refusal is not valid in law, while the Minister urged the panel to dismiss the appeal. The panel finds that the appellant has not discharged the onus on him to establish that the refusal is not valid in law. The visa officer's concerns were valid and were not satisfactorily addressed by further evidence in this appeal. On the evidence before the panel, the marriage is not genuine and was entered into primarily for the purpose of obtaining permanent resident status for the applicant.

[1] *Immigration and Refugee Protection Regulations*, SOR/2004-167.
[2] *Immigration and Refugee Protection Act*, S.C. 2001, c.27.

[5] This appeal commenced on January 19, 2007 and continued on March 14, 2007, June 29, 2007 and October 31, 2007. The visa officer's concerns are outlined in the refusal letter[3] dated March 13, 2006 as follows:

> It is my opinion that your relationship with the sponsor is not genuine and was entered into primarily for the purpose of acquiring any privilege under the Act. During my examination of your application and the information you provided at your interview on February 21, 2006, you failed to convince me that this relationship with your sponsor is genuine. You stated that your mother and your sponsor's mother are good friends, hence you knew the sponsor before he migrated. You stated that a relationship started via telephone conversations which lead to marriage on February 8, 2005. You have not convinced me that you and your sponsor developed a genuine relationship, as you were unable to give specific details of the development of this relationship. You found it difficult to remember important dates such as how many times you have seen your sponsor in recent times. Although your sponsor has been a part of your family circle for a long time your knowledge of your sponsor was found to be lacking. There is no evidence of physical, financial or emotional dependency between you and your sponsor. As a result, for the purpose of the regulations, you are not considered to be a member of the family class.

[6] The visa officer's concerns are further addressed in the Computer Assisted Immigration Processing System (CAIPS) notes of the interview held on February 21, 2006.[4]

[7] This was a particularly messy appeal, interwoven with both mothers knowing each other for a long time as best friends and the rape of the applicant leading to the birth of a daughter in 2004 prior to the marriage in 2005. Further, the applicant attempted to come to Canada on a visitor's visa in 2000. Further, the evidence of the applicant in cross-examination changed dramatically between June 29th and October 31, 2007. After hearing from both the appellant and the applicant, the panel finds their evidence contradictory, inconsistent and untrustworthy with no viable explanation for the changes in testimony or convenient memory loss to suit the questions asked in cross-examination over the three days of hearing. The documentary evidence[5] submitted in support of the appeal is therefore not trustworthy.

[8] Counsel for the appellant repeatedly requested that the panel find "compassion" and allow the appeal as the appellant and the applicant have known each other since childhood because of the close relationship between the mothers of the couple. In order to find the

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[3] Record p.5-6.
[4] Record, 16-19.
[5] Exhibit A-1.

applicant a member of the family class, the panel must be satisfied that she is not caught by section 4 of the *Regulations* as follows:

> 4. **Bad faith** – For the purposes of these Regulations, no foreign national shall be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine or was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[9] For the following reasons, the panel is of the view that the marriage between the appellant and the applicant is not genuine and was entered into primarily for the purpose of gaining the applicant a status or privilege under the *Act*.

[10] The appellant testified that has known knew the applicant all his life and they grew up together until he left for Canada in 1990. He claims he does not remember when he proposed to the applicant other than it was in summertime 2004. He claims the applicant was raped in December 2003 by a man. She became pregnant prior to the proposal. A child was born November 1, 2004. He expressed feelings that he should have been there as he feels responsible, which the panel finds inconsistent with a rape. In cross-examination the appellant knew little of the man involved, which the panel finds incredible considering the main focus placed on this incident by the couple.

[11] The appellant testified that he married the applicant "about 2005" at church and described those in attendance including "our baby". The couple was unable to give specific dates as to any co-habitation. The appellant was unable to describe who witnessed the Marriage Register.[6] In cross-examination he was unaware that his mother and his stepfather signed the Register. Both mothers were in attendance and two uncles, one from each family. The panel finds this relationship more of a friend assisting a friend to enter Canada. The appellant claims that his plans are to move on, have a house, save money and have his spouse go to school. Eventually, he testified the couple will have their own house. In the meantime, he lives in the basement of a house with his mother and two younger brothers living upstairs. When asked in cross-examination if the applicant would stay in the basement with him he claims, "if push comes to

[6] Record p.30.

shove he will work to get her a room upstairs" which the panel finds another reason to conclude the relationship is not genuine.

[12] The appellant gave evidence that he proposed to the applicant in 2004, she was raped and he felt that he should have been with her to prevent the rape. He then testified that the applicant asked him for forgiveness about the incident which the panel finds more inconsistent with a rape. The applicant testified and implied that she was raped by a stranger. Under cross-examination she described the person as someone in the neighbourhood with a store. The panel finds this portion of her evidence vague and misleading.

[13] The applicant was then unable to explain why she placed the biological father's name on the birth certificate and why they both attended together to register the document as "informant(s)" to the document.[7] The applicant expressed that she "fears" the biological father which the panel finds lacking in view of her evidence that her grandmother and this man's family are very close and communicate with each other.

[14] The applicant could give no reasonable explanation why she did not tell anyone of the rape, including her three brothers. She then said it would get many people into trouble. Then the applicant altered her evidence and claimed her brothers knew and with more vague responses. The panel finds the applicant unbelievable.

[15] In relation to the child, the applicant added that the child's father visits his daughter. Again she was vague in describing anything meaningful. The applicant went on to blame the biological father for her confusion at the interview with the visa officer because she ran into him outside and was fearful of him. The panel rejects this explanation as unreasonable as no credible basis could be given for this fear. If the applicant was so upset and fearful, she mentioned nothing to the visa officer and the panel could find nothing unusual contained in the CAIPS notes.[8]

[7] Record, p. 31.
[8] *Supra*, footnote 4.

[16] During vigorous cross-examination, the fabricated stories weaved by the applicant continued. When questioned about her attempt to obtain a Canadian Visitor's Visa in 2000, the applicant stated that she placed the name Jennifer Williams in the application rather than her spouse as she was an "aunt" or elder person. Her evidence changed and became more vague depending on the questions asked in cross-examination.

[17] The applicant's evidence became more evasive when asked about the contents of her application for permanent residence in Canada and she stated a stranger prepared same. When asked how this "stranger" obtained the information without the applicant's input the applicant became more evasive. The "stranger" then became someone who knew the information named "Janet or something". The panel finds this evidence further misleading. It is clear to the panel that the couple manufactured their evidence contrary to the integrity of the Canadian immigration scheme in order to bring the applicant to Canada rather than in support of a genuine marriage.

[18] The panel notes there have been four one or two week trips to Jamaica made by the appellant with various family members. He was confused as to the dates. However, the panel finds that these visits were family related rather than visits to the applicant as one would expect in a genuine marriage. The appellant's evidence was clear, he travelled with his mother and uncle, two brothers, then with his mother and with his mother and sister. However, the panel is not persuaded by the appellant's testimony on a balance of probabilities that these visits were other then return visits with his family.

[19] For the foregoing reasons the panel is of the view that the marriage between the appellant and the applicant is not genuine and was entered into primarily for the purpose of the applicant gaining a status or privilege under the *Act*. Accordingly, the appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

"Joan M. MacDonald"
Joan M. MacDonald

November 8, 2007
Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application	Contrôle judiciaire – Aux termes de l'article 72 de la Loi sur l'immigration et la protection des réfugiés, vous pouvez, avec l'autorisation de la Cour fédérale, présenter une demande de contrôle judiciaire de la décision rendue. Veuillez consulter un conseil sans tarder car cette demande doit être faite dans un délai précis.